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TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

THE STATE OF TEXAS, Appellant

v.

RICARDO MATA, Appellee

Appeal from Hidalgo County
Appellate Cause Number 13-17-00494-CR
Trial Cause Number CR-2611-16-B

* * * * *

# STATE'S BRIEF ON THE MERITS

* * * * *

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## IDENTITY OF JUDGE, PARTIES, AND COUNSEL

- The parties to the trial court's judgment are the State of Texas and Appellee, Ricardo Mata.

- The trial judge was Hon. Rodolfo Delgado, Presiding Judge, 93rd District Court, Hidalgo County, Texas.

- Counsel for Appellee at trial was O. Rene Flores, 208 W. Cano Street, Edinburg, Texas 78539, and Rogelio Solis, P.O. Box 2307, Edinburg, Texas 78540.

- Counsel for Appellee on appeal was O. Rene Flores and Abigail E. Chacon, 208 W. Cano Street, Edinburg, Texas 78539.

- Counsel for the State at trial was Assistant District Attorney Alejandro Aguirre, Hidalgo County Courthouse, 100 E. Cano, Edinburg, Texas 78539.

- Counsel for the State before the Court of Appeals was Assistant District Attorney Michael Morris, Appellate Division, Hidalgo County Courthouse, 100 E. Cano, Edinburg, Texas 78539.

- Counsel for the State before this Court is Emily Johnson-Liu, Assistant State Prosecuting Attorney, P.O. Box 13046, Austin, Texas 78711.

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No. PD-0810-19

TO THE COURT OF CRIMINAL APPEALS

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THE STATE OF TEXAS, Appellant

v.

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Appeal from Hidalgo County

* * * * *

**STATE'S BRIEF ON THE MERITS**

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

In *New York v. Quarles*, the Supreme Court excused a *Miranda*[1] violation under a "public safety" exception.[2] There, the pressing need was finding a gun. It should be just as important to find a kidnapped child.

## STATEMENT OF THE CASE

Appellee was charged with aggravated kidnapping, human trafficking, and

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] 467 U.S. 649, 656-57 (1984).

sexual assault of a child.[3] At a suppression hearing, he challenged the admission of his statements to police.[4] The trial court found Appellee had not been *Mirandized* before he was asked where the victim was and suppressed his response.[5] The State appealed, invoking the public safety exception, as it had in the trial court.[6] The court of appeals ruled the exception inapplicable and affirmed the suppression of the roadside statements.[7]

## ISSUE PRESENTED

> Do questions that would objectively aid a search for a kidnapped or missing person fall within *New York v. Quarles*'s public safety exception to *Miranda*?

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[3] CR 5-6.

[4] 2 RR 94-95.

[5] The trial court also suppressed his written stationhouse statement under Code of Criminal Procedure Article 38.22, but the court of appeals reversed that ruling. *State v. Mata*, No. 13-17-00494-CR, 2019 WL 3023318, at *5 (Tex. App.—Corpus Christi July 11, 2019) (not designated for publication). In his written statement, Appellee claimed that (1) he bought the victim for $300 from a trafficker in an effort to aid Border Patrol, (2) the victim was always free to leave and had sex with him consensually, and (3) he contacted her mother to recover his $300. 2 RR SX-3.

[6] CR 108-09 ("State's Memorandum of Law RE: Admissibility of Statements Made by the Accused"); State's brief in the court of appeals at 6.

[7] *Mata*, 2019 WL 3023318, at *4.

## STATEMENT OF FACTS

A man identifying himself as "El Guero" called the mother of a 15-year-old asking for money for her release.[8] Sheriff's Investigator Antonio Porraz posed as the mother's friend and talked to El Guero about an exchange.[9] Meanwhile, police tracked the man's cell phone to a house and then a car.[10] When El Guero told Porraz his cell phone battery was dying and police realized they would lose their ability to remotely track him, they asked a patrol officer to stop the driver on suspicion of kidnapping.[11] Appellee was the driver and sole occupant.

Porraz went to the scene and, without *Miranda* warnings, asked Appellee where the girl was.[12] Appellee initially denied knowing anything, but, after Porraz

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[8] 2 RR 32-36; SX-1 (warrant affidavit).

[9] 2 RR 32-36; *Mata*, 2019 WL 3023318, at *1.

[10] Police applied for real-time location information through an "Exigent Circumstance Request Form" with the cellphone provider. 2 RR 14, 24-25, 30, 36-37, 45-47, 52. The federal Stored Communications Act permits disclosures of a customer's records and other information on belief that "an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency." 18 U.S.C. § 2702(b)(8) & (c)(4).

[11] 2 RR 9, 13-16, 27.

[12] 2 RR 21-22, 28, 42-43.

revealed, "You've been talking to me all this time on the phone," Appellee offered to trade the girl's location for his release.[13] Although police refused to release him, Appellee told them where she was, and police rescued her.[14]

The trial court suppressed these roadside statements to police, ostensibly for violating *Miranda*. The State appealed. It relied on *Quarles* and *Bryant v. State*[15] and argued that the roadside interrogation fell within the public safety exception recognized in those cases. The court of appeals responded:

> In both *Quarles* and *Bryant*, the public safety exception applied where the officers were immediately concerned with the location of a gun or weapon that could have endangered the officers or the public. Here, the officers had no indication of a weapon or gun being involved or used to endanger the safety of the public. Because the exception is a narrow one, and it has only been used in situations involving the use of guns, we decline to create an exception here that may lessen the clarity of the *Miranda* rule. Accordingly, the trial court did not err in suppressing [Appellee's] roadside statements.[16]

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[13] 2 RR 10, 37-38.

[14] 2 RR 10, 97 (SX-1) (search warrant application).

[15] 816 S.W.2d 554, 557 (Tex. App.—Fort Worth 1991, no pet.) (asking the surviving occupants of a house "who shot [the deceased]" when first responding to murder scene fell within public safety exception).

[16] *Mata*, 2019 WL 3023318, at *4 (citations omitted).

## SUMMARY OF THE ARGUMENT

The scope of the public safety exception is not limited to situations involving unsecured weapons or even weapons in general. While such a limitation may factually mirror the situation in *Quarles*, it is not consistent with the holding or rationale. Limiting the exception to urgent public safety concerns is. Because that requirement is satisfied here—even more so than in *Quarles*—the public safety exception should apply.

## ARGUMENT

### *New York v. Quarles* created an exception to *Miranda.*

Assessing the proper scope of any exception requires an understanding of the general rule and its rationale. Here, *Miranda v. Arizona* states the general rule. It held that protecting the privilege against compelled self-incrimination requires procedural safeguards (typically, *Miranda* warnings) before the State can admit a defendant's statements made during custodial interrogation.[17] In *Quarles*, the Court held that public safety can trump these safeguards.[18] An officer had chased Quarles,

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[17] 384 U.S. at 444.

[18] 467 U.S. at 656.

whom he thought was armed, into the back of a supermarket, discovered his empty holster, handcuffed him, and asked where the gun was.[19] Quarles responded, "the gun is over there," and the Court held that, despite the absence of *Miranda* warnings, suppression of this statement was not required.

*Quarles* viewed *Miranda* as concluding that, in the typical situation, the benefit of warnings to protect the Fifth Amendment privilege outweighed its social cost—*i.e*., warnings would deter some suspects from answering questions and lead to fewer convictions of the guilty. But in *Quarles*, the balance tilted the other way. Where a mere *Miranda* violation (and no actual police coercion) was at stake, the Court concluded that "[t]he need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination."[20]

**Neither the exception nor its rationale is limited to questions about unsecured weapons.**

*Quarles* does not support a narrowing of the exception to situations involving an unsecured gun or weapon. First, the Supreme Court named it a "public safety

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[19] *Id*. at 652, 655.

[20] *Id*. at 657-58.

exception," not a "weapons exception."[21] *Quarles* repeatedly drew the bounds of the exception around general threats to public safety:

- "we believe that this case presents a situation where concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in *Miranda*."[22]
- "we do not believe that the doctrinal underpinnings of *Miranda* require that it be applied in all its rigor to a situation in which police officers ask questions reasonably prompted by a concern for the public safety."[23]
- officers should be allowed "to follow their legitimate instincts when confronting situations presenting a danger to the public safety."[24]

Second, the rationale underlying the exception—the reassessment of the cost-benefit of warnings—applies to all urgent threats to public safety. There is nothing about the threat from weapons that uniquely justifies a departure from *Miranda*. Courts in other states have applied the exception to questions about threats just as dangerous

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[21] *Id*. at 655.

[22] *Id*. at 653.

[23] *Id*. at 656.

[24] *Id*. at 659.

to officers or the public, like the existence or location of accomplices.[25] The *Quarles* Court stated it wanted to avoid placing officers in the "untenable position" of weighing the prospect of an answer that could secure their own safety or the public's against the prospect of damaging the criminal prosecution.[26] Applying *Miranda* when there is no evidence of a weapon but still an immediate threat to the safety of a citizen, particularly a kidnapped child, does just that.

Furthermore, in instances of kidnapping, the fact that police know a weapon is involved will often be merely fortuitous, and thus makes little sense as a triggering condition for the exception.

Also, *Quarles* itself cannot be fairly read as imposing a weapons limitation on the exception, although a few out-of-state cases have fostered this very

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[25] *See, e.g.*, *Joppy v. State*, 719 So. 2d 316, 318 (Fla. Dist. Ct. App. 1998) (involving question about whether anyone else was in burgled building and explaining that while the presence of a gun was a factor in determining reasonableness of perceived threat to safety, it was not required); *Dice v. State*, 825 P.2d 379, 386 (Wyo. 1992) (same question); *but see State v. Hazley*, 428 N.W.2d 406, 411 (Minn. Ct. App. 1988) ("Missing accomplices cannot be equated with missing guns in the absence of evidence that the accomplice presents a danger to the public").

[26] 467 U.S. at 657-58.

misconception. In a footnote, the *Quarles* Court explained that in *Orozco v. Texas*[27] its exclusion of the defendant's statements following questioning about a gun was consistent with *Quarles*.[28] The Court wrote that *Orozco* "did not in any way relate to an objectively reasonable need to protect the police or the public from any immediate danger associated with the weapon." *Id*. While the Ninth and Fourth Circuit Court of Appeals[29] have latched onto this footnote and sometimes portrayed it as the holding in *Quarles*, it is clearly not.[30] Read in context, it is only an

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[27] 394 U.S. 324 (1969).

[28] 467 U.S. at 659 n.8.

[29] *United States v. Martinez*, 406 F.3d 1160, 1165 (9th Cir. 2005); *United States v. Mobley*, 40 F.3d 688, 693 (4th Cir. 1994) ("As the *Quarles* Court indicated, the 'public safety' exception applies only where there is 'an objectively reasonable need to protect the police or the public from any immediate danger associated with [a] weapon.'"). *Martinez* and *Mobley* both involved questions about weapons and thus had no need to decide whether the exception applied to a threat to the public from something other than a weapon. 406 F.3d at 1163; 40 F.3d at 693. If anything, the actual holding in *Martinez* takes an expansive, not narrow, view of the exception since it applied a "public" safety exception to a private sphere: weapons sitting in plain view inside a house.

[30] While not citing to the footnote, the Sixth Circuit has described *Quarles* as incorporating a weapons requirement. *United States v. Williams*, 483 F.3d 425, 428 (6th Cir. 2007) ("For an officer to have a reasonable belief that he is in danger, at minimum, he must have reason to believe (1) that the defendant might have (or recently have had) a weapon, and (2) that someone other than police might gain access to that weapon and inflict harm with it. The public safety exception applies if and only if both of those two conditions are satisfied and no other context-specific evidence rebuts the inference that the officer reasonably could have perceived a threat to public safety."). But it has also applied the exception to a

application of the new rule to *Orosco*'s facts—whose only potential public safety consideration was the location of a weapon. The Court would have said "a weapon" instead of "the weapon" if it intended to speak more broadly. Thus, the footnoted text cannot be understood as expressing a requirement that weapons must be involved. And both the Supreme Court and this Court's restatements of *Quarles*'s holding are consistent with that position.[31]

**The only qualifier justified by *Quarles*, besides public safety, is urgency.**

The court of appeals here properly recognized that the exception is "narrow"

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situation that does not involve an unsecured weapon in a public space. *See United States v. Mohammed*, 501 Fed. Appx. 431, 444 (6th Cir. 2012) (asking suspected heroin dealer, before a pat-down search, whether he had drug paraphernalia on his person that could harm the officer). Other federal circuits have applied the exception to similar circumstances. *See, e.g.*, *United States v. Luker*, 395 F.3d 830, 832 (8th Cir. 2005); *United States v. Webster*, 162 F.3d 308, 332 (5th Cir. 1998); *United States v. Carrillo*, 16 F.3d 1046, 1049 (9th Cir. 1994).

[31] *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984) ("The Court held in [*Quarles*] that, when the police arrest a suspect under circumstances presenting an imminent danger to the public safety, they may without informing him of his constitutional rights ask questions essential to elicit information necessary to neutralize the threat to the public. Once such information has been obtained, the suspect must be given the standard warnings."); *Wicker v. State*, 740 S.W.2d 779, 786 (Tex. Crim. App. 1987) ("the protection afforded by *Miranda* is inapplicable in those situations in which there is a prompt or immediate concern for public safety").

and was concerned that broadening it lessens the clarity of *Miranda*.[32] But the court of appeals erred to the extent it suggested that mere involvement of a weapon in the case (without danger to others) would provide an appropriate limitation.[33] It is not difficult to envision scenarios where a gun may happen to be involved but pose no threat to anyone's safety.[34]

Furthermore, *Quarles* addressed the court of appeals's concern about lack of clarity and was confident the rule would be kept narrow by another qualifier: "in each case [the exception] will be circumscribed by the exigency which justifies it."[35] The Court concluded that when the situation is "kaleidoscopic" and "spontaneity rather than adherence to a policy manual is necessarily the order of the day," officers will intuitively know (and ask) the questions needed to secure their safety or the

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[32] *Mata*, 2019 WL 3023318, at *4.

[33] *Id.*, at *4 ("Here, the officers had no indication of a weapon or gun being involved or used to endanger the safety of the public. . . . [The exception] has only been used in situations involving the use of guns.").

[34] *See, e.g.*, *State v. Stevenson*, 784 S.W.2d 143, 145 (Tex. App.—Fort Worth 1990, no pet.) (rejecting application of public safety exception despite involvement of a gun because it was inside a private residence where no one else could gain access to it).

[35] *Quarles*, 467 U.S. at 658.

public's.[36] True to this prediction, the exception has been used sparingly in the years since *Quarles*. Westlaw shows only twenty-six Texas appellate cases citing *Quarles*, and this Court has never had the occasion to determine its parameters. The court of appeals erred to conclude that an artificial limitation like a weapons requirement is needed to keep the exception narrow.

**The exception should apply to an urgent search for a kidnapping victim.**

Asking the whereabouts of a kidnapping victim should be exempt from *Miranda* because such questions fall squarely within the public safety exception.[37] Black's Law Dictionary defines "public safety" as "[t]he welfare and protection of the general public."[38] Kidnappers are considered such a threat to public safety that, even in absence of any sexual intent, they are required on conviction to register as

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[36] *Id*. at 656, 658-89.

[37] *See* Bruce Ching, *Mirandizing Terrorism Suspects? The Public Safety Exception, the Rescue Doctrine, and Implicit Analogies to Self-Defense, Defense of Others, and Battered Woman Syndrome*, 64 CATH. U.L. REV. 613, 622 (2015) (suggesting that the public-safety exception is a "criminal procedure analogue to the criminal law doctrine of defense of others"—*i.e*., justified when questioning is an "immediately necessity" and "reasonably" prompted by a concern for the safety of the public).

[38] "Public Safety," BLACK'S LAW DICTIONARY (11th ed. 2019).

sex-offenders.[39] The incentive of safe-release punishment mitigation for aggravated kidnapping serves as additional recognition that many victims do not return home unharmed.[40]

Kidnapping situations also present a greater exigency than did the unsecured gun in *Quarles*. The number of places a child could be hidden in a community are far more numerous than where a gun could be stashed in a store. And the aim of kidnapping—to secrete the child away from possible aide or rescue—makes it a nearly foregone conclusion that harm will result if the child is not found.[41] Consequently, both the likelihood and magnitude of harm to the child (whose chances at recovery decrease sharply over time)[42] are greater than the mere

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[39] TEX. CODE CRIM. PROC. art. 62.001(5)(E) (requiring registration when the victim was under 17).

[40] TEX. PENAL CODE § 20.04(d).

[41] TEX. PENAL CODE §§ 20.01(2)(A), 20.03(a).

[42] "Fast action is necessary [in responding to a reported missing child] since there is typically over a two-hour delay in making the initial missing child report, and the vast majority of the abducted children *who are murdered* are dead within three hours of the abduction." Rob McKenna, Attorney General of Washington & U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, *Case Management for Missing Children Homicide Investigation*, at x (2006) (emphasis in original), available online at http://www.pollyklaas.org/about/national-child-kidnapping.html.

hypothetical risk in *Quarles—i.e.*, that someone other than police would find the missing handgun *and* use it to harm themselves or another.[43]

**The court of appeals's holding creates dissonance with related doctrines.**

In insisting on *Miranda* warnings despite the urgent public safety concern of a kidnapped child, the court of appeals creates incongruence with the holdings of the Supreme Court and Court of Criminal Appeals in two other related contexts. The emergency-aid doctrine authorizes officers to cross the threshold of a person's home and search it without warrant if they reasonably believe a person inside is in need of immediate aid.[44] Like *Quarles*,[45] the emergency-aid doctrine is divorced from an officer's crime-fighting duties and "strictly circumscribed by the exigencies which justify its initiation."[46] A similar doctrine excuses a lack of confrontation and cross-examination when the primary purpose of police questioning would enable police to

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[43] Justice O'Connor's side opinion points out that at the time Quarles stashed the gun, it was the middle of the night and the store was "empty." 467 U.S. at 685 (O'Connor, J., concurring and dissenting).

[44] *Mincey v. Arizona*, 437 U.S. 385, 392 (1978); *Laney v. State*, 117 S.W.3d 854, 855 (Tex. Crim. App. 2003).

[45] *Quarles*, 467 U.S. at 659 n.8 (indicating exigency "beyond the normal need expeditiously to solve a serious crime" is required).

[46] *Mincey*, 437 U.S. at 392.

meet an "ongoing emergency."[47] There, the Supreme Court again recognized the practical realities of such situations—that police will be focused on ending the threat, not collecting evidence.[48] If such circumstances can excuse police entry into the refuge of one's home or render inapplicable the great legal engine of cross-examination, they should excuse a *Miranda* violation.

**Courts frequently except these circumstances from the *Miranda* rule.**

The court of appeals was also wrong when it asserted that the *Quarles* exception "has only been used in situations involving the use of guns."[49] Numerous federal and state courts have applied the public safety exception when questioning was aimed at finding a missing or abducted person.[50] Others have done so through

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[47] *Michigan v. Bryant*, 562 U.S. 344, 359-60 (2011).

[48] *Id*. at 361.

[49] *Mata*, 2019 WL 3023318, at *4.

[50] *See, e.g.*, *United States v. Jones*, 842 F.3d 1077, 1082 (8th Cir. 2016) (statements to police while house was on fire and victim had not yet been located); *Lindsay v. State*, ___ So.3d ___, CR-15-1061, 2019 WL 1105024, at *16 (Ala. Crim. App. Mar. 8, 2019) (police were concerned with welfare of 21-month-old child who had been missing for 6 days); *Com. v. Sepulveda*, 855 A.2d 783, 790-91 (Pa. 2004) (officers asked location of female involved in reported violent domestic dispute); *State v. Orso*, 789 S.W.2d 177, 184 (Mo. Ct. App. 1990) (questioning about missing elderly woman); *State v. Spence*, CA2002-05-107, 2003 WL 21904788, at *4 (Ohio Ct. App. Aug. 11, 2003) (officers did not know if defendant's wife was still alive and he was only person who knew her location).

their state's "rescue doctrine," which pre-dated *Quarles*,[51] and some, contrary to *Quarles*,[52] required proof that the officer's primary purpose was to rescue a person in danger.[53] The *Quarles* exception has also been applied when the defendant's own life is in danger.[54]

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[51] *People v. Modesto*, 398 P.2d 753, 759 (Cal. 1965), *overruled on other grounds by Griffin v. California*, 380 U.S. 609, 614-15 (1965); *People v. Krom*, 461 N.E.2d 276, 282 (N.Y. 1984) ("It would not be reasonable or realistic to expect the police to refrain from pursuing the most obvious, and perhaps the only source of information by questioning the kidnapper, simply because the kidnapper asserted the right to counsel after being taken into custody.").

[52] *Quarles*, 467 U.S. at 656 (adopting objective test).

[53] *Underwood v. State*, 252 P.3d 221, 236 (Okla. Crim. App. 2011) (applying "rescue doctrine," as "natural and logical extension" of the public safety exception, to officer asking "where is she?" about young girl who had been missing for two days); *People v. Davis*, 208 P.3d 78, 122-24 (Cal. 2009) (questioning about location of kidnapped Polly Klaas and explaining rescue doctrine as involving "circumstances of extreme emergency where the possibility of saving the life of a missing victim exists"); *State v. Provost*, 490 N.W.2d 93, 96 (Minn. 1992) (adopting a separate rescue exception where primary purpose of questioning was to find a possible burn victim, defendant's wife, in wilderness area before it was too late); *State v. Kunkel*, 404 N.W.2d 69, 76 (Wis. Ct. App. 1987) (officers not required to "choose between forfeiting the opportunity to save [nine-month-old] from possible and imminent loss of life and forfeiting the right to obtain evidence from a suspect in custody"). *See also* Alan Raphael, *The Current Scope of the Public Safety Exception to Miranda Under New York v. Quarles*, 2 N.Y. CITY L. REV. 63, 76 (1998) (arguing that these "rescue doctrine" cases "logically fall under *Quarles* because they include a substantial threat to someone's safety and involve emergency situations.").

[54] *State v. Betances*, 828 A.2d 1248, 1257 (Conn. 2003) (asking defendant whether he had just swallowed drugs).

**Conclusion**

This Court should hold that questioning objectively aimed at recovering a kidnapping victim to protect that person from imminent harm falls within the public safety exception.

## PRAYER FOR RELIEF

The State of Texas prays that the Court of Criminal Appeals reverse the court of appeals and the trial court's suppression of Appellee's roadside statements.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to Microsoft Word's word-count tool, this document contains 3,407 words, exclusive of the items excepted by Tex. R. App. P. 9.4(i)(1).

/s/ Emily Johnson-Liu
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## CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of October 2019, the State's Brief on the Merits was served electronically on the parties below.

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